

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE SCOTTS EZ SEED LITIGATION

: **ORDER**

: 12 CV 4727 (VB)

The Court has received and carefully reviewed a joint letter from the parties, dated March 16, 2015 (Doc. #133) (“Joint Letter”), in which the parties detail various disputes regarding plaintiffs’ proposed notice plan (Joint Letter Ex. A). The Court believes further briefing is unnecessary with regard to the three disputes addressed below, and resolves them as follows:

First, as to whether Scotts should have to post notice on its own website (Joint Letter at 3), the Court agrees Scotts should not be forced to communicate plaintiffs’ allegations on Scotts’ website. It is plaintiffs’ obligation to provide notice. Accordingly, the portion of the proposed notice plan stating Scotts must post a banner on its website and Facebook page linking to The Case Website shall be deleted.

Second, as to the timing of notice (Joint Letter at 5), the notice will be disseminated as soon as it is finalized. Plaintiffs are correct that Scotts’ 23(f) petition does not stay proceedings in the district court, and Scotts provides no authority to support its suggestion that notice should not be disseminated until after the close of merits discovery.

Third, as to domain names (Joint Letter at 5), the Court finds “EZSeedLawsuit” is a reasonable domain name. However, the notice plan shall not include any domain names including the word “Scotts.”

The remaining disputes raised in the Joint Letter will be referred for resolution to Magistrate Judge Davison, namely:

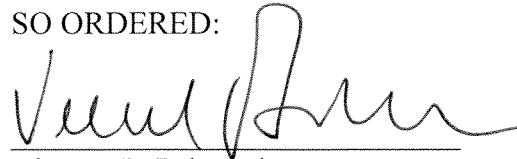
1. Whether plaintiffs’ proposal on individual notice (email or postal mail vs. email and postal mail) complies with Rule 23 (Joint Letter at 1-2);
2. Whether plaintiffs’ proposal for publication notice (Internet banner/Facebook ads/press release vs. printed publications) complies with Rule 23 (Joint Letter at 2-3);
3. Whether the notice plan should require posters to be displayed in third parties’ retail stores (Joint Letter at 4); and
4. Whether the language for the class notices (Long Form, Short Form, Post-Card Form) should include detailed information about the merits of the lawsuit (Joint Letter at 4-5).

The Court expresses no opinion as to whether further briefing is necessary or the manner

in which the magistrate judge should otherwise resolve these disputes. Magistrate Judge Davison will inform the parties should he require any further information or briefing.

Dated: March 26, 2015  
White Plains, NY

SO ORDERED:



Vincent L. Briccetti  
United States District Judge